

EXHIBIT N

From: [2804 Discovery, MDL](#)
To: [MDL 2804](#)
Subject: FW: EXTERNAL-RE: MDL 2804 - Walgreens response re request for hearing
Date: Thursday, January 10, 2019 9:40:54 PM

From: David R. Cohen <David@SpecialMaster.Law>

Sent: Friday, January 11, 2019 3:36:20 AM

To: Sharon Desh

Cc: Kate Swift; Kaspar Stoffelmayr; Mougey, Peter; jgaddy; ppoerschke; Dunning, Laura; Shkolnik, Hunter; Badala, Salvatore C.; Joseph L. Ciaccio; Gay, Josh; xALLDEFENDANTS-MDL2804-Service@arnoldporter.com; 2804 Discovery, MDL

Subject: EXTERNAL-RE: MDL 2804 - Walgreens response re request for hearing

Dear counsel:

Please find below an additional thought following today's discovery hearing on Walgreens-related issues.

Right now, Walgreens (like all pharmacy defendants) is making distinctions between "dispensing" information and "distribution" information, and withholding some but not all of the former. This is allowed by Discovery Ruling no. 8. But as was discussed at the hearing, Walgreens withholds dispensing information at its peril, to the extent that: (1) Walgreens insists the dispensing information is **not** used in the SOMS process or due diligence process in any way, such as to determine whether an order is suspicious, or is cleared for shipment after an order is flagged as possibly suspicious (via "override"), or to reduce an order's size, and so on (all of which goes to distribution); and (2) it is discovered later in this litigation that, in fact, the dispensing information **is** used in the SOMS process or due diligence process.

As I explained, Walgreens should make very sure that its basis for non-production of dispensing information is grounded in fact, especially in light of plaintiffs' assertion that knowledgeable Walgreens witnesses have testified that its SOMS/due diligence decision tree operates differently than stated by Walgreens' 30b6 witness. I did not order Walgreens to produce dispensing data, but warned it should be careful with its risk/benefit analysis in its choice. To be clear: the risk is a sanction, up to and including judgment as a matter of law, for failure to produce dispensing data or dispensing information that is used in SOMS/due diligence decisions. If Walgreens is very confident that, in fact, dispensing data is not used in the SOMS/due diligence process, then it should stand pat. But I have made clear the consequences of an incorrect choice.

I said all of the above during our conference. Here is the additional thought: I believe there is a high likelihood that, at some point in this litigation, Walgreens and other pharmacies WILL face dispensing claims, and therefore will eventually have to produce **all** relevant dispensing information. So it seems a bit silly to run a risk of sanction for drawing the wrong line when the line will be moved soon anyway. In other words, when making a risk/benefit analysis, the benefit of withholding discovery of dispensing information will probably eventually disappear anyway.

In sum: this MDL litigation has a long arc. The long view counsels against aggressive decisions on resisting discovery. Please be sure the information you are withholding as irrelevant really is. As ordered, Walgreens is reviewing its production to make sure all

relevant dispensing information is or will promptly be produced.

-David

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----- Original Message -----

Subject: MDL 2804 - Walgreens response re request for hearing
From: Sharon Desh <Sharon.desh@bartlitbeck.com>
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Special Master Cohen,

Attached please find Walgreens' response to Plaintiffs' request for a discovery hearing. This PDF contains links to Walgreens' discovery letters in this matter, which confirm the identified issues are resolved (and have been for several months). As such, there is nothing additional to discuss tomorrow and Walgreens respectfully submits that no hearing is necessary during this busy time.

If you have questions on any specific items, please let me know.

Thank you,

Sharon

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On Jan 4, 2019, at 11:26 AM, Josh Gay <jgay@levinlaw.com> wrote:

Special Master Cohen,

Please see attached letter and zip file containing attachments sent on behalf of Peter Mougey.

Josh Gay

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<2019-01-04 - Plaintiff Ltr to Walgreens and SM Cohen re Outstanding Defi....pdf><Attachments - Walgreens.zip>

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